STATE OF MICHIGAN

COURT OF APPEALS

MARY BETH BROWN, Plaintiff-Appellee,	UNPUBLISHED April 6, 2006
v	No. 257017 Berrien Circuit Court
1514 W. THOMAS, L.L.C., Defendant-Appellant.	LC No. 03-003325-CH

Before: Smolenski, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Defendant appeals by right from the trial court's judgment for plaintiff on her claim for repayment of a loan pursuant to the terms of a promissory note. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant is an Illinois limited liability company owned by four "financially sophisticated businessmen." Plaintiff is a resident of Michigan who loaned $50,000 to defendant under the terms of a promissory note (Note). The Note provides for 25 percent interest per annum and a five percent fee for late payments. Upon default, defendant must pay plaintiff's collection expenses. The Note was prepared by defendant and was signed by defendant's manager. Plaintiff signed the Note in Michigan. The Note states that it "shall be construed, governed and enforced in accordance with the laws" of Illinois. The loan proceeds were to be used to finance the development of real estate in Chicago, Illinois. An associated consulting fee agreement provides that defendant will pay plaintiff a consulting fee equal to five percent of the outstanding amount of the loan.

Defendant defaulted on its repayment of the loan. Plaintiff sued defendant for the principal, interest, and attorney fees as provided in the Note. Defendant claimed that the interest provisions in the Note are usurious under Michigan law, MCL 438.41 and MCL 438.61(3), and, therefore, plaintiff is not entitled to collect any interest or attorney fees. See MCL 438.32. The trial court decided the case on facts stipulated by the parties. The court determined that Illinois law governed the dispute and that, under Illinois law, a limited liability company may agree to pay any rate of interest. See 805 ILCS 180/1-30(7). The court concluded that the Note was legal and enforceable and awarded judgment for plaintiff.

Defendant claims that Michigan law applies to the Note and that under Michigan law the Note's 25 percent interest rate with the associated five percent consulting fee and five percent late charge is usurious. We disagree that Michigan law applies.

The parties to a contract may expressly provide that the contract will subject to the laws of a particular jurisdiction. *Offerdahl v Silverstein*, 224 Mich App 417, 419; 569 NW2d 834 (1997). As a general rule, the parties' choice of law will be followed. However, "the choice of law will not be followed if the chosen state has no substantial relationship to the parties or the transaction," if "there is no reasonable basis for choosing that state's law," or if "the application of the chosen state's law . . . 'would be contrary to a fundamental policy of a state which has a materially greater interest than the chosen state in the determination of the particular issue and which . . . would be the state of the applicable law in the absence of an effective choice of law by the parties.'" *Chrysler Corp v Skyline Industrial Services, Inc*, 448 Mich 113, 126; 528 NW2d 698 (1995), quoting Restatement Conflict of Laws, 2d, § 187(2)(b).

We find that Illinois has a substantial relationship to the parties and that there is a reasonable basis to apply Illinois law. Defendant is an Illinois limited liability company. Plaintiff loaned her money to defendant agreeing to the application of Illinois law and knowing that the loan proceeds would be invested in property located in Chicago, Illinois. We also determine that Illinois has a materially greater interest in the application of its law than Michigan has in the application of its law. As a matter of its public policy, Illinois specifically permits a limited liability company to agree to any rate of interest to obtain funding. Michigan, however, has no interest in protecting an Illinois limited liability company from enforcement of a contract in Michigan that is legal in Illinois, especially where an agent of the Illinois company travels to Michigan and voluntarily enters into a contract providing for the application of Illinois law with a Michigan resident to obtain financing for its own benefit. Clearly, the Illinois company could not be surprised or harmed in a manner outside of its contemplation by receiving what it bargained for under Illinois law. Arguably, Michigan might have a greater interest than Illinois in the application of its law if a Michigan citizen were being sued in a Michigan court by an Illinois business to collect on a note that was made in Michigan and charged an interest rate that was usurious under Michigan law. However, that is not the case here. Accordingly, we find that Illinois law applies to the interpretation and enforcement of the Note.

Under Illinois law, this note was not usurious. Under 805 ILCS 180/1-30(7), an Illinois limited liability company may borrow money at "any rate of interest the limited liability company may determine without regard to the restriction of any usury law of this State." Accordingly, we find that the Note's interest rate of 25 percent, even when combined with the associated charges that could be characterized as interest, is enforceable under Illinois law.

Affirmed.

/s/ Michael R. Smolenski
/s/ Donald S. Owens
/s/ Pat M. Donofrio